

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIELLE MILLER,
Plaintiff,

v.

STANFORD HEALTH CARE, et al.,
Defendants.

Case No. [15-cv-02389 NC](#)

ORDER TO SHOW CAUSE

Re: Dkt. No. 40

In this personal injury action, plaintiff Miller filed a first amended complaint on January 11, 2016, without requesting leave from the Court or consent from the defendants to do so. Dkt. No. 40.

Rule 15(a) provides that “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend the party’s pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Under this rule, Miller could amend her complaint only by leave of court or by written consent, because a responsive pleading was served on July 15, 2015. Dkt. No. 20.

Moreover, under Rule 16(b)(4), “[a] schedule may be modified only for good cause and with the judge’s consent.” This Court’s order at docket 35 set a scheduling order that required pleadings to be amended by November 2, 2015. Further, the Court dismissed some of the defendants from the case in its order at docket 21. Miller has failed to show

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1 good cause why the Court's previous scheduling order should be modified, or why she has
2 included defendants that the Court has dismissed from the case.

3 Here, Miller did not file a stipulation or motion for leave to file her first amended
4 complaint, and the document "therefore has no legal effect." *Ritzer v. Gerovicap Pharm.*
5 *Corp.*, 162 F.R.D. 642, 644 (D. Nev. 1995); *Hoover v. Blue Cross & Blue Shield*, 855 F.2d
6 1538, 1544 (11th Cir. 1988) (plaintiff improperly filed amended complaint so amended
7 complaint had no legal effect).

8 Therefore, Miller is ordered to show cause by January 20, 2016, why the Court
9 should permit her first amended complaint.

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11 **IT IS SO ORDERED.**

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13 Dated: January 13, 2016

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16 NATHANAEL M. COUSINS
17 United States Magistrate Judge
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